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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

Marshall Field,

No. C 09-5972 MHP (JL)

Plaintiff,

v.

**ORDER DENYING WITHOUT  
PREJUDICE PLAINTIFF'S DISCOVERY  
REQUEST (Docket # 58)**

American Mortgage Express Corporation,  
et al,

Defendants.

All discovery in this case has been referred by the district court (Hon. Marilyn Hall Patel) under 28 U.S.C. §636(b). The parties submitted their separate statements regarding their discovery dispute following this Court's briefing order and the matter was submitted without oral argument under Civil Local Rule 7-1(b). The Court carefully considered the parties' briefing, the applicable law, and the record in this case, and hereby denies Plaintiff's request for discovery related to whether Defendant Gevity was a joint or co-employer of potential class members, without prejudice to renewal of this request should this case proceed to Phase II discovery.

Plaintiff by this motion seeks discovery related to whether Gevity was a joint or co-employer both of himself and also of potential class members. The Court finds that the record is clear that, as delineated in the Case Management Order issued March 22, 2010,

1 e-filed at Docket Number 28, Phase I discovery is limited to whether Gevity is a joint or co-  
2 employer of named plaintiff Marshall Field, and that only with the advent of Phase II  
3 discovery, related to class certification, will Plaintiff be entitled to discovery relevant to  
4 whether Gevity was a joint or co-employer of potential class members:

5 The Parties anticipate exchanging written discovery in the near future. They will then  
6 engage in Phase I discovery directed at the issue of whether Gevity was a joint or  
7 co-employer for purposes of the claims asserted under the California Labor Code.  
8 The Parties agree that Gevity can first depose Plaintiff Marshall Field on Phase I  
9 issues, after which time Plaintiff may depose Marla Barr on Phase I issues. At the  
10 conclusion of Phase I discovery, one or both Parties may file a motion for summary  
11 judgment on the issue of whether Gevity was a joint or co-employer for purposes of  
12 the claims asserted in the FAC.

13 If the case is not disposed of on summary judgment following Phase I of discovery,  
14 the Parties will commence class related discovery ("Phase II Discovery"). Plaintiff  
15 thereafter may file a Motion for Class Certification.

16 (Case management Statement and Order at 4:26-5:9)

17 Accordingly, Plaintiff's request for discovery related to whether Gevity was a joint or  
18 co-employer of potential class members is hereby denied without prejudice to renewal  
19 should this case proceed to Phase II discovery.

20 IT IS SO ORDERED.

21 DATED: April 14, 2011

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23 JAMES LARSON  
24 United States Magistrate Judge

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